

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)
37.82.435 pertaining to Medicaid real)
property liens)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-416 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 1608 of the 2007 Montana Administrative Register, issue number 20.

2. The department has amended ARM 37.82.435 as proposed.

3. After receiving public comment, the department has amended the following rule that was not in the proposal notice (see comment and response #1). Matter to be added is underlined. Matter to be deleted is interlined.

37.5.307 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

(a) and (b) remain as proposed.

(c) A request for a hearing by a claimant must be received by the department within 90 days from the date of mailing of notice of the adverse action, except as otherwise provided in these rules.

(i) A hearing request from a claimant must be received in writing within 30 days of the date of mailing of notice of the adverse action regarding:

(A) a department determination of ability to pay for the cost of care in an institution under 53-1-405, MCA;

(B) a nursing facility's transfer or discharge of a nursing facility resident; ~~or~~

(C) a substantiated report of child abuse, neglect, or exploitation; or

(D) a proposal by the department to file a lien under 53-6-171, MCA; or

(ii) through (4) remain as proposed.

AUTH: 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-7-102, 53-20-305, MCA

IMP: 2-4-201, 41-3-202, 41-3-205, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-401, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-20-305, MCA

4. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

Montana Administrative Register 37-416

COMMENT #1: In its notice of public hearing on proposed amendment, the department did not propose an amendment to ARM 37.5.307. That rule states the general rule that a hearing request must be received by the Office of Fair Hearings within 90 days, except as otherwise provided in the rules. It also lists three types of adverse action for which a hearing request must be received within 30 days. I fear that persons aggrieved by a proposal to file a Medicaid lien will look only at ARM 37.5.307 and will assume they have 90 days to request a hearing. This will result in confusion and misunderstandings and may result in unjust liens being filed against real property. I recommend that ARM 37.5.307 be amended to specifically list hearings on proposed Medicaid liens as cases requiring receipt of a hearing request within 30 days.

RESPONSE: The department agrees and has amended ARM 37.5.307 accordingly.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State December 10, 2007.